

temporary variance), not permanent or lasting.

*Tolerance.* The maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food.

*Transplant.* A seedling which has been removed from its original place of production, transported, and replanted.

*Unavoidable residual environmental contamination (UREC).* Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

*Wild crop.* Any plant or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agricultural management.

*Yards/Feeding pad.* An area for feeding, exercising, and outdoor access for livestock during the non-grazing season and a high traffic area where animals may receive supplemental feeding during the grazing season.

[65 FR 80637, Dec. 21, 2000, as amended at 72 FR 70484, Dec. 12, 2007; 75 FR 7192, Feb. 17, 2010]

## Subpart B—Applicability

### § 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

(b) Any production or handling operation or specified portion of a production or handling operation that has been already certified by a certifying agent on the date that the certifying agent receives its accreditation under this part shall be deemed to be certified under the Act until the operation's next anniversary date of certification. Such recognition shall only be

available to those operations certified by a certifying agent that receives its accreditation within 18 months from February 20, 2001.

(c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than 3.91(b)(1)(xxxvii) of this title per violation.

(2) Makes a false statement under the Act to the Secretary, a governing State official, or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

[65 FR 80637, Dec. 21, 2000, as amended at 70 FR 29579, May 24, 2005]

### § 205.101 Exemptions and exclusions from certification.

(a) *Exemptions.* (1) A production or handling operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals \$5,000 or less annually is exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part and the labeling requirements of § 205.310. The products from such operations shall not be used as ingredients identified as organic in processed products produced by another handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272

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with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(4) A handling operation or portion of a handling operation that only identifies organic ingredients on the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) *Exclusions.* (1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.272 with respect to any organically produced products, if such operation or portion of the operation only sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” is excluded from the requirements in this part, except:

(i) The requirements for the prevention of contact with prohibited substances as set forth in § 205.272; and

(ii) The labeling provisions of § 205.310.

(c) *Records to be maintained by exempt operations.* (1) Any handling operation exempt from certification pursuant to paragraph (a)(3) or (a)(4) of this section must maintain records sufficient to:

(i) Prove that ingredients identified as organic were organically produced and handled; and

(ii) Verify quantities produced from such ingredients.

(2) Records must be maintained for no less than 3 years beyond their creation and the operations must allow representatives of the Secretary and the applicable State organic programs’ governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

### § 205.102 Use of the term, “organic.”

Any agricultural product that is sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be:

(a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.240 and all other applicable requirements of part 205; and

(b) Handled in accordance with the requirements specified in § 205.101 or §§ 205.270 through 205.272 and all other applicable requirements of this part 205.

[65 FR 80637, Dec. 21, 2000, as amended at 75 FR 7193, Feb. 17, 2010]

### § 205.103 Recordkeeping by certified operations.

(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”

(b) Such records must:

(1) Be adapted to the particular business that the certified operation is conducting;

(2) Fully disclose all activities and transactions of the certified operation